

AT-138, EJ-125

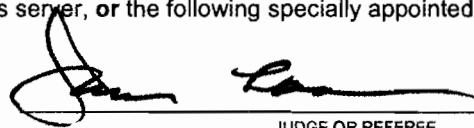
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Bruce K. Leigh SBN 129753 Stanton, Kay & Watson LLP 101 New Montgomery, 5th Floor  San Francisco CA 94105 TELEPHONE NO.: 415/512-3501 FAX NO.: 415/512-3515 ATTORNEY FOR (Name): Judgment Creditors		FOR COURT USE ONLY  <b>FILED</b>  <b>MAR 09 2006</b>  <b>RICHARD W. WIEKING</b> CLERK, U.S. DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  <b>E-filing</b>
NAME OF COURT: U. S. District Court, ND Cal. STREET ADDRESS: 450 Golden Gate Avenue MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: San Francisco		
PLAINTIFF: Larry Totten and Jose Moreno  DEFENDANT: Marinship Construction Services, Inc., and Derek H. Smith		
<b>APPLICATION AND ORDER FOR APPEARANCE AND EXAMINATION</b> <input checked="" type="checkbox"/> <b>ENFORCEMENT OF JUDGMENT</b> <input type="checkbox"/> <b>ATTACHMENT (Third Person)</b> <input type="checkbox"/> <b>Judgment Debtor</b> <input checked="" type="checkbox"/> <b>Third Person</b>		
		CASE NUMBER: 3:04cv3733 MHP (JL)

**ORDER TO APPEAR FOR EXAMINATION**

- TO (name): Marinship Construction Services, Inc., in person of Derek H. Smith
- YOU ARE ORDERED TO APPEAR personally before this court, or before a referee appointed by the court, to
  - ☐ furnish information to aid in enforcement of a money judgment against you.
  - ☒ answer concerning property of the judgment debtor in your possession or control or concerning a debt you owe the judgment debtor.
  - ☐ answer concerning property of the defendant in your possession or control or concerning a debt you owe the defendant that is subject to attachment.

Date: **April 19, 2006** Time: **9:30 a.m.** Dept. or Div.: ~~10th Fl~~ Rm.: ~~xxxxxx~~  
 Address of court ☒ shown above ☐ is: **15th Flr** **Courtroom F**

3. This order may be served by a sheriff, marshal, registered process server, or the following specially appointed person (name):

Date: **3-9-06**


JUDGE OR REFEREE

This order must be served not less than 10 days before the date set for the examination.

**IMPORTANT NOTICES ON REVERSE****APPLICATION FOR ORDER TO APPEAR FOR EXAMINATION**

- ☒ Judgment creditor    ☐ Assignee of record    ☐ Plaintiff who has a right to attach order  
 applies for an order requiring (name): \_\_\_\_\_ to appear and furnish information  
 to aid in enforcement of the money judgment or to answer concerning property or debt.
- The person to be examined is  
☐ the judgment debtor  
☒ a third person (1) who has possession or control of property belonging to the judgment debtor or the defendant or (2) who  
 owes the judgment debtor or the defendant more than \$250. An affidavit supporting this application under Code of Civil  
 Procedure section 491.110 or 708.120 is attached.
- The person to be examined resides or has a place of business in this county or within 150 miles of the place of examination.
- ☐ This court is **not** the court in which the money judgment is entered or (attachment only) the court that issued the writ of  
 attachment. An affidavit supporting an application under Code of Civil Procedure section 491.150 or 708.160 is attached.
- ☐ The judgment debtor has been examined within the past 120 days. An affidavit showing good cause for another examination  
 is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: February 23, 2006

Bruce K. Leigh

(TYPE OR PRINT NAME)

(Continued on reverse)

(SIGNATURE OF DECLARANT)

**ATTACHMENT A**

Application and Order For Appearance and Examination

4. Judgment creditor: Marinship Construction Services, Inc. in person of Derek H. Smith

James P. Watson, (SBN 046127)  
Bruce K. Leigh (SBN 129753)  
STANTON, KAY & WATSON, LLP  
101 New Montgomery, Fifth Floor  
San Francisco, CA 94105  
Telephone: (415) 512-3501  
Facsimile: (415) 512-3515

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LARRY TOTTEN as CHAIRMAN and JOSE MORENO as CO-CHAIRMAN of the BOARD OF TRUSTEES FOR THE LABORERS HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA; LABORERS VACATION-HOLIDAY TRUST FUND FOR NORTHERN CALIFORNIA; LABORERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA; and LABORERS TRAINING AND RETRAINING TRUST FUND FOR NORTHERN CALIFORNIA,

Plaintiffs,

v.

MARINSHIP CONSTRUCTION SERVICES, INC., a California corporation; and DEREK H. SMITH, an Individual,

Defendant.

**Case No.: 3:04cv3733 MHP**

**DECLARATION OF BRUCE K. LEIGH  
IN SUPPORT OF JUDGMENT  
CREDITORS' APPLICATION FOR  
ORDER TO APPEAR FOR  
EXAMINATION**

I, BRUCE K. LEIGH, declare as follows:

1. I am an associate of the law firm of Stanton, Kay & Watson, LLP, counsel to plaintiffs and now judgment creditors LARRY TOTTEN and JOSE MORENO, as Chairman and Co-Chairman, respectively, of the Boards of Trustees for the various Laborers Trust Funds named in the caption above.

2. Based on my examination of the correspondence and pleadings files in this action, and investigation into the assets of the judgment debtors, Marinship Construction Services, Inc., and

1 Derek H. Smith, I have personal knowledge of the following, and, if I were called upon to testify, I  
2 would be competent to do so as to the following.

3 3. On March 21, 2005, this Court entered a *Judgment By The Court* in this action awarding  
4 plaintiffs a money judgment in the amount of \$196,724.65 to be paid by the judgment debtors,  
5 Marinship Construction Services, Inc., and Derek H. Smith.

6 4. Neither judgment debtor has made any payment to reduce this joint judgment debt. The  
7 only payment received since the judgment was entered was by a general contractor, pursuant to a  
8 collective bargaining agreement, in the amount of \$6,780.24 from funds otherwise owed to the  
9 debtors. Apart from this payment, the judgment remains due and payable in full. Accordingly, to  
10 enforce collection on the judgment, the judgment creditors now apply for orders to appear for  
11 examination directed to Derek H. Smith as settlor, trustee or beneficiary of the Derek H. Smith 2003  
12 Trust and as chief executive officer of Marinship Construction Services, Inc.

13 5. My search of real property tax assessors' records and transaction records has found that  
14 Derek H. Smith is listed as the settlor, trustee and/or beneficiary of a Derek H. Smith 2003 Trust,  
15 which is owner or part owner of real property at 3637 Rhoda Avenue, Oakland, CA 94602-3318.  
16 Judgment creditors reasonably believe that Derek H. Smith has information regarding this Trust and  
17 possession or control of records of this Trust.

18 6. Derek H. Smith is also listed in the corporation license record and/or California  
19 Contractor's State License Board record of Marinship Construction Services, Inc., as its chief  
20 executive officer or responsible managing officer. Judgment creditors reasonably believe that Derek  
21 H. Smith has information regarding this corporation and possession or control of its records relating  
22 to its assets and to income and assets of judgment debtor Derek H. Smith.

23 7. Thus, the judgment creditors in this action have reasonable information and belief to  
24 support their application herein for an order to appear for examination under C.C.P. §§ 708.120 or

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1 708.130 directed to Derek H. Smith as settler, trustee, or beneficiary of the Trust and as chief  
2 executive officer of the corporation.

3  
4 I declare under penalty of perjury under the laws of the State of California that the foregoing  
5 is true and correct and that this declaration was executed on February 22, 2006, at San Francisco,  
6 California.

7  
8 DATED: February 22, 2006

STANTON, KAY & WATSON, LLP

9  
10 By Bruce K. Leigh  
11 Bruce K. Leigh  
12 Attorneys for Plaintiffs  
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